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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/066,005

01/31/2002

Neil D. Scancarella

Rev 01-3

5183

26807

7590

05/06/2008

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

05/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/066,005	Applicant(s) SCANCARELLA ET AL.	
	Examiner GINA C. YU	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on February 5, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 38-41 and 56-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 38-41, 56-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on February 5, 2008. Claim rejections made under 35 U.S.C. § 102(b) as indicated in the previous Office action dated December 19, 2007 are withdrawn in view of the claim amendment made by applicant. A new rejection is made to address the amended claims. Claims 17, 38-41, 56-65 are pending.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 17, 38-41, 56-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Drechsler et al. (US 6074654) as evidenced by STN Registry.

Claim 17 recites “[a] lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition for use in combination with a non reactive wetting agent having affinity to, the composition, said wetting agent being a liquid polymeric hydrocarbon having a number average molecular weight greater than 650 devoid of non-volatile silicone oils, and wherein the wetting agent overcoat composition flows smoothly over the composition”. In this case, the claimed subject matter is a cosmetic composition comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone. The recitation “for use in combination with a non reactive wetting agent” and onward denotes the intended use and purpose of the cosmetic containing the cross-linked resinous silicone and does not further define the silicone composition. Claims 38-41 and 56-59 are directed to the

wetting agent overcoat composition of the preamble which recites for how the transfer-resistant silicone composition is used, and do not add any limitation to the claimed subject matter. Thus no patentable weight is given to these claims.

Drechsler discloses a lip color film-forming composition comprising crosslinked organosiloxane resins such as Wacker 803 from Wacker Silicones Corp. (trimethylsiloxysilicate) and pigments in a volatile carrier. See col. 7, line 46 - col. 9, line 2. The reference also discloses a method of enhancing the gloss, shine, and feel of lip composition by apply a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. See col. 10, line 63 - col. 16, line 7. The reference also teaches in col. 2, lines 7-13 that it is well known in the art to formulate a transfer-resistant cosmetic composition with trimethylated silica and volatile solvent. The reference teaches using the film forming silicone resin in the amount ranging from 10 to 95 %. See instant claims 63 and 64. Example 7 also contains 10 % of Bentone Gel VS-5PC, which contains quaternium-19 hectorite. See STN-Registry. See instant claims 60-62, 65.

Response to Arguments

Applicant's arguments with respect to claims 17, 38-41, and 56-65 have been considered but are unpersuasive.

Section 102 (b) Rejection made in view of Finkenaar et al. (US 4935228) as evidenced by Amoco Technical Data

The rejection is withdrawn in view of the claim amendment made by applicant, and applicant's arguments are moot.

Applicant states that the presently claimed invention is a “two part color coat liquid polymeric hydrocarbon system”. However, the argument is not commensurate with the scope of the claim, and the features upon which applicant relies (i.e., overcoat composition) are not recited as a part of the claimed product in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As discussed above in the rejection, the claimed subject matter is a transfer-resistant lip cosmetic composition comprising cross-linked resinous silicone is not a two part composition system.

Section 102 (b) Rejection made in view of Manufacturing Chemist as evidenced by Exxon Mobile Chemical Technical Data

The rejection is withdrawn in view of the claim amendment made by applicant, and applicant's arguments are moot.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Gina C. Yu/
Patent Examiner